HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.2522 of 2006

Between:

P.M. Venkata Ramana and another

… Petitioners

And

The Government of A.P. rep. by its Ex-Officio Secretary to Govt.-cum-Commissioner of Civil Supplies, Department of Consumer Affairs, Food & Civil Supplies (CS.III), Secretariat, Hyderabad and others.

… Respondents

:: ORDER::

Counsel for the Petitioner: Sri L.J. Veera Reddy

Counsel for Respondents No.1 & 2: Government Pleader for Civil Supplies

Counsel for Respondent No.3: Sri Ch. Srinivasa Raju

July 10, 2006

Per G.S. Singhvi, CJ

In this petition, the petitioners have prayed for quashing the selection and appointment of respondent No.3 – Shaik Abdul Khader Basha as Male

Member of District Consumer Disputes Redressal Forum, Kadapa (for short 'the District Forum').

The Facts:

In response to notification dated 25-4-2005 issued by the Registrar of Andhra Pradesh State Consumer Disputes Redressal Commission (for short 'the State Commission'), the petitioners, who are practicing as advocates at Kadapa, respondent No.3, who is a retired Deputy Superintendent of Police, and nine other persons applied for appointment as Member of the District Forum. They appeared in the written test held by the Commission on 24-7-2005. The petitioners and respondent No.3 were declared successful. The petitioners secured 63 marks each and respondent No.3 secured 61 marks. They were interviewed by the Selection Committee consisting of the following:

1) President, A.P. State Consumer Disputes Redressal Commission (Chairman)
2) Ex-Officio Secretary to Government, Consumer Affairs, Food and Civil Supplies Department, Government of Andhra Pradesh, and
3) Member and Secretary to Government, Law Department (Legislative Affairs).

The Selection Committee recommended the name of respondent No.3. The State Government accepted the recommendations of the Selection Committee and issued G.O.Ms.No.150, dated 30-12-2005, whereby respondent No.3 was appointed as Member of the District Forum.

The petitioners have questioned the selection and appointment of respondent No.3 by alleging that the recommendation made by the Selection Committee is vitiated by arbitrariness. In the affidavit filed by petitioner No.1 – P.M. Venkata Ramana, it has been averred that he and petitioner No.2 K.Krishna Reddy are more meritorious than respondent No.3 and they had performed well in viva voce, but the Selection Committee, without adjudging their comparative merit, recommended the name of respondent No.3, which culminated in his appointment as Member of the District Forum, and, in this manner, they have been discriminated.

When the case was listed on 13-2-2006 for admission hearing, learned counsel for the petitioners made a request for adjournment to enable his clients to make an application to the competent authority under the Right to

Information Act, 2005 for supply of the details of marks awarded in the interview. Thereafter, the learned counsel submitted application dated 2-3-2006 to the State Public Information Officer for supply of the details of the marks awarded by the Selection Committee in the interview. In reply, the State Public Information Officer-cum-Assistant Registrar, A.P. State Consumer Disputes Redressal Commission sent letter RoC.No.80/2006/APSCDRC/ AR/ dt. 17-04-2006 to both the petitioners informing them that no marks were allotted to oral interview, but selection had been made on the basis of the performance of the candidates in the oral interview and taking into consideration the marks secured in the written examination. For the sake of convenient reference, the relevant portions of that letter are extracted below:

> "Sir,
>
> Sub: Freedom of Information Act, 2002 – P.M. Venkata Ramana and K. Krishna Reddy, Advocates, Kadapa – Information under Rule-3 of A.P. Right to Information Rules, 2002.
>
> Ref: Your requisition dated 04-04-2006
>
> ***
>
> With reference to the letter cited, I am to furnish the following information under Rule-3 of the Freedom of Information Act, 2002.
>
> Sri Shaik Abdul Khader Basha, 3rd respondent in W.P. No.2522/2006 secured 61 marks in the written test conducted on 24-7-2005.
>
> No marks were allotted to oral interview. But, basing on the performance of the three candidates in the oral interview and taken into consideration the marks secured in the written examination, selection was made."

After considering the contents of the aforementioned letter, the Court passed order dated 27-4-2006 for issue of notice to the respondents for final disposal of the writ petition. That order reads as under:

> "Heard learned counsel for the petitioners and perused the record.
>
> The main ground on which the petitioners have challenged the selection and appointment of respondent No.3 is that the Selection Commission headed by the Chairman, Andhra Pradesh State Consumer Disputes Redressal Commission had arbitrarily picked out respondent No.3 for appointment despite

the fact that he secured less marks in the written test.

In furtherance of the direction given by the Court, the State Public Information Officer vide letter dated 17-4-2006 has informed the writ petitioners that no marks had been allotted by the Selection Commission for the oral interviews.

In view of the information made available by the State Public Information Officer, we are prima facie satisfied that the selection and appointment of respondent No.3 is tainted by patent arbitrariness and violation of Articles 14 and 16 (1) of the Constitution.

Let notice be issued to the respondents for 23-6-2006 to show cause as to why the writ petition may not be admitted and finally disposed of.

A copy of this order be sent to the President of the Andhra Pradesh State Consumer Disputes Redressal Commission so as to enable him to consider the desirability of suo motu reviewing the selection."

On 27-6-2006, the case was adjourned to 3-7-2006 to enable the learned Government Pleader to produce original record of the Selection Committee. The relevant extracts of that order are also reproduced below:

"Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners argued that selection of respondent No.3 for appointment as Member of the District Forum is tainted by patent arbitrariness bordering nepotism, inasmuch as even though his clients had secured higher marks than respondent No.3, the latter was selected without following any discernible criteria for judging the performance of the candidates in the viva voce.

Learned Government Pleader supported the selection and appointment of respondent No.3 by arguing that the Selection Committee had adjudged respondent No.3 more meritorious as compared to the petitioners.

In the context of the submission made by the learned Government Pleader, we repeatedly requested him to show the criteria adopted by the Selection Committee for judging the suitability/merit of the candidates, but he could not draw our attention to any such criteria. At the same time, he insisted that the minutes recorded by the Selection Committee should be treated as sufficient for rejecting the petitioners' challenge to the selection of respondent No.3.

> In our opinion, the aforementioned submission of the learned Government Pleader cannot be accepted. It is well settled that appointment to every public post is required to be made by following some procedure consistent with the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. Article 16 (1) declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. In last 50 years, the Courts have given meaningful interpretation to the doctrine of equality, so far as the sphere of employment is concerned. One of the principles laid down by the Courts is that while selecting the candidates for appointment to public post, the appointing authority should adopt some discernible and objective criteria or yardstick for judging the performance of competing class of persons falling within the zone of eligibility/consideration. The Courts have recognized viva voce as one of the modes of recruitment, but it has also been held that the process of viva voce should not be arbitrary. It should be objective and based on rational criteria.
>
> Learned Government Pleader is directed to produce before the Court the original record of the Selection Committee."

On the next date i.e. 3-7-2006, the learned Government Pleader produced the record, but, as the same did not contain original minutes of the Selection Committee, the case was adjourned to 4-7-2006 for production of the original Minutes. On 4-7-2006, the learned Government Pleader produced the original minutes of the Selection Committee for perusal of the Court. After going through the same, we asked him to show the record containing the marks allotted to the candidates who were interviewed on 26 and 27th July, 2005. In reply, the learned Government Pleader stated that no marks were allotted in the interview.

Sri L.J. Veera Reddy reiterated the grounds set out in the writ petition and argued that the selection and appointment of respondent No.3 should be declared illegal and quashed because the Selection Committee did not adopt any discernible criteria for assessing performance of the candidates in the viva-voce and there is no record to show the evaluation of comparative merit of the petitioners and respondent No.3. Learned counsel further argued that the incorrect mention made in the minutes of the Selection Committee regarding the marks obtained in the oral interview is clearly indicative of the farcical

nature of the recommendations made by the Selection Committee. Sri Reddy emphasized that without there being any assessment of the performance of the candidates in the viva-voce, the Selection Committee could not have adjudged respondent No.3 more meritorious than the petitioner ignoring the fact that the latter had secured more marks in the written test.

Learned Government Pleader for Civil Supplies fairly admitted that the record of the Selection Committee does not contain any document showing the assessment of performance of the candidates in the viva voce. He also conceded that the record made available to him does not contain the criteria evolved by the Selection Committee for adjudging comparative merit of the candidates. He, however, argued that, in exercise of power under Article 226 of the Constitution, the High Court cannot sit in appeal over the recommendations made by the Selection Committee and re-assess the merit of the candidates. Sri Srinivasa Raju, learned counsel for respondent No.3 joined the Government Pleader and argued that the selection of respondent No.3 cannot be annulled simply because the Selection Committee did not award marks to the candidates for assessing their performance in the viva-voce. Learned counsel emphasized that while in service, respondent No.3 had done commendable work and had substantial administrative experience which was taken into consideration by the Selection Committee for adjudging him most meritorious and submitted that the Court may not nullify his selection and appointment at this stage.

We have thoughtfully considered the respective arguments and carefully perused the record. The moot question which needs determination by the Court is whether the recommendations made by the Selection Committee and its acceptance by the State Government are vitiated due to violation of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India.

For determination of the aforementioned question, it is apposite to mention that the petitioners and respondent No.3 possess the academic qualification prescribed under Section 16 (1)(b)(ii) of the Act. In the written test held on 24-7-2005, the petitioners secured 63 marks each as against 61 marks secured by respondent No.3. It is, thus, clear that in so far as the written

test is concerned, the performance of the petitioners was better than that of respondent No.3. The Selection Committee could have, after making an objective assessment of the performance of the candidates in the viva-voce with reference to the factors enumerated in Section 16 (1)(b)(iii) like ability, integrity and standing, and knowledge and experience of the candidates of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, adjudged respondent No.3 more meritorious than the petitioners and, in that event, the Court would have been extremely loath to upset the recommendations of the Selection Committee and approval thereof by the State Government, but having regard to the fact that the Selection Committee did not adopt any rationale criteria for assessing performance of the candidates in the viva voce and there is no record showing evaluation of comparative merit of the petitioners and respondent, we find it impossible to put the seal of legitimacy on the recommendations made by the Selection Committee.

The record produced by the Government Pleader shows that in its meeting held on 26-7-2005, the Selection Committee recommended 15 candidates for appointment as Male and Lady Members of different District Forums. This is evinced from the following extracts of the minutes.

> "The Selection Committee consisting of the Hon'ble President, A.P. State Consumer Disputes Redressal Commission as Chairman, Ex officio Secretary to Government, Consumer Affairs, Food and Civil Supplies Department, Government of Andhra Pradesh and Secretary to Government, Law Department (Legislative Affairs), the Government of Andhra Pradesh as Members, on careful consideration of applications received pursuant to the notifications in Dis.No.1731/2004 dated 17-5-2004 in respect of Male Member, District Consumer Forum, Chittoor; Lady Member, District Consumer Forum, Khammam; Dis.No.2877/2004 dated 21-7-2004 in respect of Lady Member, District Consumer Forum, Ananthapur; Male and Lady Members District Consumer Forum, Srikakulam; Dis.No.4683/2004 dated 14-10-2004 in respect of Male and Lady Members, Additional District Consumer Forum III, Hyderabad; District Consumer Forum II, Visakhapatnam; Additional District Consumer Forum, East Godavari District at Rajahmundry; Additional District Consumer Forum, Chittoor District at Tirupati; Roc.No.32 dated 10-01-2005 in respect of Male Member, District Consumer

Forum, West Godavari District at Eluru; Lady Member, District Consumer Forum, Warangal and Roc.No.559 dated 25-4-2005 in respect of Male Member, District Consumer Forum, Kadapa, the highest marks obtained by the three Top Ranking Candidates in the written examination held on

24-7-2005 and the marks obtained in oral interview on 25th and 26th July, 2005 unanimously resolved to recommend the following candidates who are fully qualified and eligible for appointment to the post of Member as shown hereunder:

Sl.No.	Hall Ticket Number	Name of the candidate	Post and the District Forum to e appointed	Date on or after the appointment is to be made
1	001	Smt. S.Lalitha w/o N.Prabhakar, Dr.No.2/201, IInd Road, New Towm. Ananthapur-515001	Lady Member, District Consumer Forum,A Ananthapur	Immediately
2	004	Sri K.Subramanya Reddy S/o RangaReddy, Dr.No.14-1304, Hospital Road, Chittoor	Male Member, District Forum, Chittoor	Immediately
3	108	Sri M.Subba Rayudu,s/o M.C.Venkata Subbaiah Naidu (late) Dr.No.18-4-47, Sri Venkata Ramana Nilayama, Railway colony, Tirupathi	Male Member, Additional District Forum, Chittoor District at Tirupati	Immediately
4	425	Sri D.Mahesh Kumar s/o. Nagarajaiah No. IC-75, Irramanzil Colony, Hyderabad	Male Member, Additional District Forum III, Hyderbad.	Immediately
5	502	Nirmala Challagala W/o Sri C.Siddartha, 428A Road No.22, Jubilee Hills, Hyderabad	Lady Member, Additional District Forum III,Hyderabad	Immediately

6	572	Sri Shaik Abdul Khader Basha, Deputy Superintendent of Police, Intelligence, Dr.No.1/271, Maruthinagar, Kadapa-516001	Male Member, District Forum, Kadapa	w.e.f.1-9-2005
7	583	Smt Vijayarekha Vemulapalli, l w/o. Jawahar Babu, H.No.11-9-151, Lenin Nagar, Khammam	LadyMember, District Forum, Khammam	Immediately
8	247	Sri P.Raghu Rama Rao s/o PSRK Thimmaji Roa, Dr.No.8-21-2, Pollavari Street, Gandhi Nagar, Kakinada	Male Member, District Forum, East Godavari at Kakinada	Immediately
9	198	Sri A. Madhusudhana Rao s/o. Rajagopala Rao, Dr.No.4-99, Srinivasa Nagar, Vamalapudi, Kakinada	Male Member, Additional District Forum, East Godavari District at Rajamundry	Immediately
10.	320	Smt H.V.Ramana (C.V.Ramana) w/o late C.V.Rao, Flat No.9, Savera Apartments, Prakash Nagar, Rajamundry, E.G.Dt.	Lady Member, Additional District Forum, East Godavari District at Rajamundry	Immediately
11	795	Karrin Siva Rama Krishna, s/o. late Bheema Rao, Advocate, Manguruthota, Srikakulam-532001	Male Member, District Forum, Srikakulam	Immediately
12	794	Smt Dayala Raja Kumari, c/o Putta Venkateswara Rao, D.No.8-4-54/55, G.T.Road, Srikakulam-532001	Lady Member, District Forum, Srikakulam	Immediately

13	628	Sri K.Muralidhar, s/o. Sri K.Ramana Murthy, 6, Appayya Nagar, NH5, Palem, Visakhapatnam	Male Member, Aditional District Florum II, Visakhapatnam	Immediately
14	727	Ms.M.Sreerama Sujatha d/o.M.Venkata Ratnam, H.No.1-1-117/2, Bansilar Nagar, Budwel, Rajendranagar, Hyderabad	Lady Member, Additional Disttrict Forum II, Visakhapatnam	Immediately
15	785	Sri B.Appa Rao, s/o. Pedda Simhadri, New Railway Gate, Chebrole village, Unguturu Mandal, West Gopdavari District	Male Member, District Forum, West Godavari District at Eluru	Immediately

The Government of Andhra Pradesh by way of G.O. Ms.No.84, Consumer Affairs, Food and Civil Supplies (CS.III) Department, dated 5-7-2005 and notification, Sri B.Venkateswara Rao, Male Member, District Forum, East Godavari District at Kakinada was removed. Consequently, the post of Male Member, District Forum, East Godavari District at Kakinada fell vacant. The Selection Committee which interviewed the candidates at the ratio of 1:3; in so far as the East Godavari District is concerned, interviewed 6 candidates in the order of merit and recommended the two candidates to the post of Male Member, District Forum, East Godavari District at Kakinada and East Godavari District at Rajamundry respectively.

The above candidates are recommended for appointment to the post of Member for a term of 5 years or 65 years of age whichever is earlier from the date of assuming charge."

If the Selection Committee had adjudged respondent No.3 more meritorious on the basis of the marks secured by the candidates in the written test and viva-voce, we would not have ventured to undertake re-evaluation of comparative merit of the candidates because that would have been beyond the scope of Court's power of judicial review of such administrative actions. However, the fact of the matter is that the Selection Committee recommended the name of respondent No.3 by wrongly presuming that he had secured more marks in the written examination and oral interview. In the earlier part of this

order, we have taken cognizance of the statement made by the learned Government Pleader that the Selection Committee did not award marks in the oral interview. This is also borne out from letter dated 17-4-2006 sent to the petitioners by the State Public Information Officer of the Commission, relevant paragraphs of which have been extracted above. It is beyond the comprehension of any person of reasonable prudence as to how the Selection Committee could recommend the name of respondent No.3 on the basis of the marks obtained in the oral interview held on 25/26-7-2005 when, as a matter of fact, no marks were allotted to the candidates in the oral interview. In our considered view, the recommendation made by the Selection Committee for appointment of respondent No.3 as Member of the District Forum is ex-facie arbitrary and violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

The Selection Committee's failure to adopt some rationale and discernible criteria for assessing the performance of the candidates in the oral interview and their comparative merit coupled with the fact that the minutes of the meeting held on 26-7-2005 contains a patently incorrect mention regarding allotment of marks in oral interview lends credibility to the argument of the learned counsel for the petitioners that the recommendations made by the Selection Committee are tainted by arbitrariness. In our opinion, the Selection Committee could not have adjudged respondent No.3 more meritorious without assessing the performance of the candidates in the oral interview and without evaluating their comparative merit with reference to the factors enumerated in Section 16 (1)(b)(iii).

The argument of the learned Government Pleader and Sri Ch.Srinivasa Raju, Advocate representing respondent No.3 that this Court cannot sit in appeal over the recommendations made by the Selection Committee is theoretically unexceptionable, but the same cannot be accepted for sustaining the selection and appointment of respondent No.3. The petitioners' challenge to the selection and appointment of respondent No.3 is founded on the allegation that the Selection Committee did not adopt any rationale and discernible criteria for assessing performance of the candidates in the interview and their comparative merit has not been adjudged with reference to

relevant considerations. Our finding is that the Selection Committee did not adopt any criteria for assessing the performance of the candidates in the viva-voce and, as a matter of fact, no record has been maintained to show that respondent No.3 was adjudged more meritorious than the petitioners. This cannot be equated with revaluation of the comparative merit of the candidates by the Court. Therefore, the conclusion recorded by us falls within the limited scope of the power of judicial review.

Before concluding, we are constrained to record our disapproval of the manner in which the Selection Committee recommended the name of respondent No.3. The very fact that those constituting the Selection Committee including the Chairman of the State Commission did not even bother to read the minutes before signing the same which, as per the statement of the learned Government Pleader, contains patently wrong mention of the marks obtained by the candidates in the oral interview shows that the selection of respondent No.3 is based on factors other than merit.

In the result, the writ petition is allowed. The selection and appointment of respondent No.3 as Member of the District Consumer Disputes Redressal Forum, Kadapa is declared illegal and quashed. Respondent No.3 shall forthwith cease to be a member of the District Forum. The vacancy caused due to invalidation of the appointment of respondent No.3 shall be filled in accordance with Section 16 (1)(b) read with Section 16 (1A) of the Act within a period of two months from today.

G.S. SINGHVI, CJ

G.BHAVANI PRASAD, J

July 10, 2006
svs